

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT O'BRIEN and NICHOLAS MARTIN,) individually, and on behalf of all others similarly) situated,)) Plaintiffs,)) v.)) PIZZA PANINOS, INC. d/b/a PANINO'S) PIZZERIA, an Illinois corporation, and) DOES 1-10,)) Defendant.)	No. 10 cv 2991 Judge Virginia Kendall Magistrate Soat Brown
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**PLAINTIFFS' MOTION TO SUSPEND BRIEFING ON
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
PENDING RECEIPT OF DEFENDANT'S DISCOVERY RESPONSES**

NOW COME Plaintiffs ROBERT O'BRIEN and NICHOLAS MARTIN, by and through counsel, and for their *Motion to Suspend Briefing on Plaintiffs' Motion for Class Certification Pending Receipt of Defendant's Discovery Responses*, state as follows:

On August 27, 2010, Plaintiffs filed their Motion for Class Certification in this case, seeking to certify a class defined the class as follows:

all persons to whom the Defendant provided an electronically printed receipt at the point of sale or transaction, in a transaction occurring in Illinois after June 3, 2008, which receipt displays the expiration date of the person's credit card or debit card.

(See, Plaintiffs' Motion for Class Certification, Docket No. 16).

On September 10, 2010, Defendant filed its response in opposition to Plaintiffs' motion. (See, Docket No. 25). In its response, Defendant argues that class certification is improper at this point because "Plaintiffs in this case have failed to present any *evidence* supporting their allegations...." (See, Docket No. 25, p. 3) (emphasis in original). Defendant specifically argues that Plaintiffs have not sufficiently demonstrated that the numerosity requirement of Fed. R. Civ. P. 23(a)(1) has been met. (Docket No. 25, pp. 4-5).

Plaintiffs believe Defendant's objections are unfounded and are confident that the evidence will show that numerosity is clearly satisfied in this case, especially considering the fact that Defendant provided two separate unlawful receipts to Plaintiffs over 1 ½ months apart. (See, Plaintiff's Amended Complaint, Docket No. 6, Paras. 12-13). To be sure, Defendant likely had at least one customer per day between that time period alone; thus, there are at least 40 members in the class. However, to avoid any uncertainty, Plaintiffs request that the Court temporarily suspend briefing on Plaintiffs' motion pending Plaintiffs' receipt of Defendant's discovery responses.

Plaintiffs issued their first set of discovery requests to Defendant on August 31, 2010, seeking, *inter alia*, information regarding the number of non-truncated receipts Defendant provided to consumer cardholders. Plaintiffs anticipate that Defendant's response to Plaintiffs' discovery requests will definitively establish that the numerosity requirement has been met in this case. Upon receipt of Defendant's discovery responses, Plaintiffs will promptly file a supplement to their Motion for Class Certification identifying the specific evidence establishing numerosity that Defendant claims is lacking from Plaintiffs' motion.

Defendant will not be prejudiced by this delay, as Defendant is the party challenging whether Plaintiffs have sufficiently established the numerosity requirement for class certification.

WHEREFORE, Plaintiffs ROBERT O'BRIEN and NICHOLAS MARTIN, individually, and on behalf of all others similarly situated, pray that the Court enter an order (a) suspending briefing on Plaintiffs' Motion for Class Certification pending Plaintiffs' receipt of Defendant's discovery responses, (b) granting Plaintiffs leave to file a supplement to their Motion for Class Certification within 30 days after receipt of Defendant's discovery responses, and (c) for any other relief the Court deems just.

ROBERT O'BRIEN and NICHOLAS MARTIN, individually,
and on behalf of all others similarly situated,

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